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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Civil Revision No. 6138 of 2007**
Date of decision: 29.11.2007

**Ali Mohd. And another** **...Petitioners**

**Versus**

**Issa** **...Respondent**

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. Naveen Kuashik, Advocate for the petitioner.

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**RAJESH BINDAL, J.**

The challenge in the present petition is to the order dated October 24, 2007 passed by the learned Additional Civil Judge (Senior Division), Nuh whereby defence of petitioners/defendants was struck off.

For the view I am taking in the present petition, I do not deem it appropriate to issue notice to the respondent as the same would unnecessarily delay not only disposal of the present petition but the suit as well.

Learned counsel for the petitioners/defendants submitted that respondent/plaintiff filed the suit for declaration with consequential relief of permanent injunction in the trial Court and upon notice petitioners/defendants appeared for the first time through their counsel on July 24, 2007. On that date the case was ordered to be fixed for filing of written statement and reply to the stay application for October 24, 2007 but the petitioners/defendants could not file written statement and reply to the stay application and requested for one opportunity but learned trial Court struck off their defence vide order dated October 24, 2007 (Annexure P-1) holding that mandatory period for filing of written statement and reply to stay application was duly availed by the defendants. He submitted that in case one opportunity is granted to petitioners/defendants, they will file written statement on the next date fixed by the trial Court i.e. January 8,

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2008.

As far as the period prescribed for filing the written statement under Order 8 Rule 1 CPC, is concerned, the same has been held to be directory in nature by judgments of Hon'ble the Supreme Court in **Kailash v. Nanhku and others,** 2005(2) RCR(C) 379 and **Surender Singh and others v. Omvati and others,** 2005(3) RCR(C) 786. It is further held therein that in exceptional circumstances the Court can extend time beyond 90 days for filing written statement so as to avoid injustice being caused to the parties.

In a recent judgment in **M/s R.N.Jadi & Brothers & others v. Subhashchandra**, 2007(2) RCR(C) 139, Hon'ble the Supreme Court considered the issue. Trial Court in **R.N.Jadi's case (supra)** had granted time till a date which was beyond 90 days, however, written statement filed on that date was not accepted. Hon'ble the Supreme Court, while accepting the plea of the defendant in that case directed the trial court to take note of the written statement already filed by the defendant therein. The relevant observations of Hon'ble the Supreme Court are extracted below:-

> "8. Order VIII, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent

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prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justiciae* where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of jurisprudence-processual, as much as substantive"

Having heard learned counsel appearing for the petitioners/defendants and considering the position of law as referred to above, I find merit in the submission made by learned counsel for the petitioners/defendants . Keeping in view interest of justice and the fact that that defence of petitioners/defendants was struck off on 93rd day, I grant one opportunity to the petitioners/defendants for filing written statement and reply to the stay application on the date already fixed by the trial Court

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i.e. January 8, 2008 subject to payment of Rs. 2,000/- as costs to the plaintiff/respondent. However, it is made clear that no further opportunity shall be granted to the petitioners-defendants in case, they fail to file written statement on the date fixed.

The revision petition is disposed of in the manner indicated above.

**November 29, 2007** **(Rajesh Bindal)**
**Pka** **Judge**